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condone the guilt of private respondent, we, nevertheless, are concluded by the factual finding of the NLRC that his misconduct is not work-related and did not, in any way, disrupt the operations of the company.

**WHEREFORE,** the petition is *DISMISSED*, and the temporary restraining order issued by this Court on 15 April 1991 is now *LIFTED*. No costs.

**SO ORDERED.**

*Bidin (Acting Chairman), Romero,* and *Melo, JJ.*, concur.

*Feliciano, J.*, on leave.

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**SECOND DIVISION**

[G.R. No. 108524. November 10, 1994]

**MISAMIS ORIENTAL ASSOCIATION OF COCO TRADERS, INC.,** *petitioner, vs.* **DEPARTMENT OF FINANCE SECRETARY, COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE (BIR), and REVENUE DISTRICT OFFICER, BIR MISAMIS ORIENTAL,** *respondents*.

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE INTERPRETATION OF LAWS BY GOVERNMENT AGENCY CHARGED WITH ITS ENFORCEMENT, ENTITLED TO GREAT WEIGHT. —** Under Section 103(a) of the NIRC, the sale of agricultural non-food products in their original state is exempt from VAT only if the sale is made by the primary producer or owner of the land from which the same are produced. The sale made by any other person or entity, like a trader or dealer, is not exempt from the tax. On the other

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hand, under Section 103(b) the sale of agricultural food products in their original state is exempt from VAT at all stages of production or distribution regardless of who the seller is. We agree with respondents. In interpreting Section 103(a) and (b) of the NIRC, the Commissioner of Internal Revenue gave it a strict construction consistent with the rule that tax exemptions must be strictly construed against the taxpayer and liberally in favor of the state. Indeed, even Dr. Kintanar said that his classification of copra food was based on "the broader definition of food which includes agricultural commodities and other components used in the manufacture/processing of food." Moreover, as the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight. Indeed, the ruling was made by the Commissioner of Internal Revenue in the exercise of his power under Section 245 of the NIRC to "make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including rulings on the classification of articles for sales tax and similar purposes."

**2. ID.; ID.; DISTINCTION BETWEEN LEGISLATIVE RULES AND INTERPRETATIVE RULES. —** There is a distinction in administrative law between legislative rules and interpretative rules. There would be force in petitioner's argument if the circular in question were in the nature of a legislative rule. But it is not. It is a mere interpretative rule. In addition such rule must be published. On the other hand, interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing. Accordingly, in considering a legislative rule a court is free to make three inquiries: (i) whether the rule is within the delegated authority of the administrative agency; (ii) whether it is reasonable; and (iii) whether it was issued pursuant to proper procedure. But the court is not free to substitute its judgment as to the desirability or wisdom of the rule for the legislative body, by its delegation of administrative judgment, has committed those questions to administrative judgments and not to judicial judgments. In the case of an interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. As a matter of power a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment;

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or (iii) give some intermediate degree of authoritative weight to the interpretative rule.

**3. ID.; ID.; ID.; REASON. —** The reason for this distinction is that a legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing.

**4. TAXATION; NATIONAL INTERNAL REVENUE CODE; COMMISSIONER OF INTERNAL REVENUE; NOT BOUND BY THE RULING OF HIS PREDECESSOR; MAY CONSIDER COPRA AS A NON-FOOD PRODUCT; CASE AT BAR. —** In the case at bar, we find no reason for holding that respondent Commissioner erred in not considering copra as an "agricultural food product" within the meaning of Section 103(b) of the NIRC. As the Solicitor General contends, "copra *per se* is not food, that is, it is not intended for human consumption. Simply stated, nobody eats copra for food." That previous Commissioners considered it so, is not reason for holding that the present interpretation is wrong. The Commissioner of Internal Revenue is not bound by the ruling of his predecessors. To the contrary, the overruling of decisions is inherent in the interpretation of laws.

**5. POLITCAL LAW; CONSTITUTIONAL LAW; EQUAL PROTECTION CLAUSE; SUBSTANTIAL DIFFERENCE BETWEEN COCONUT FARMER AND COPRA PRODUCERS, REASONABLE BASIS FOR DIFFERENT CLASSIFICATION FOR PURPOSES OF TAXATION; CASE AT BAR. —** Petitioner likewise claims that RMC No. 47-91 is discriminatory and violative of the equal protection clause of the Constitution because while coconut farmers and copra producers are exempt, traders and dealers are not, although both sell copra in its original state. Petitioners add that oil millers do not enjoy tax credit out of the VAT payment of traders and dealers. The argument has no merit. There is a material or substantial difference between coconut farmers and copra producers, on the one hand, and copra traders and dealers, on the other. The former produce and sell copra, the latter merely sell copra. The Constitution does not forbid the differential treatment of persons so long as there is a reasonable basis for classifying them differently. It is not true that oil millers are exempt from VAT. Pursuant

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to Section 102 of the NIRC, they are subject to 10% VAT on the sale of services. Under Section 104 of the Tax Code, they are allowed to credit the input tax on the sale of copra by traders and dealers, but there is no tax credit if the sale is made directly by the copra producer as the sale is VAT exempt. In the same manner, copra traders and dealers are allowed to credit the input tax on the sale of copra by other traders and dealers, but there is no tax credit if the sale is made by the producer.

**6. TAXATION; NATIONAL INTERNAL REVENUE CODE; VAT; ALLEGATION OF COUNTER PRODUCTIVITY OF CLASSIFICATION OF COPRAS AS AN AGRICULTURAL NON-FOOD, A QUESTION OF WISDOM OR POLICY. —** The sale of agricultural non-food products is exempt from VAT only when made by the primary producer or owner of the land from which the same is produced, but in the case of agricultural food products their sale in their original state is exempt at all stages of production or distribution. At any rate, the argument that the classification of copra as agricultural non-food product is counterproductive is a question of wisdom or policy which should be addressed to respondent officials and to Congress.

**APPEARANCES OF COUNSEL**

*Damsing Law Office* for petitioner.
*The Solicitor General* for respondents.

**D E C I S I O N**

**MENDOZA, *J.*:**

This is a petition for prohibition and injunction seeking to nullify Revenue Memorandum Circular No. 47-91 and enjoin the collection by respondent revenue officials of the Value Added Tax (VAT) on the sale of copra by members of petitioner organization.[1]

[1] The value-added tax is a percentage tax on the sale, barter, exchange or importation of goods or services. (NIRC, $99) Insofar as the sale, barter or exchange of goods is concerned, the tax is equivalent to 10% of the gross selling price or gross value in money of the goods sold, bartered or exchanged, such tax to be paid by the seller or transferor. ($ 100(a)) The tax is determined as follows:

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Petitioner Misamis Oriental Association of Coco Traders, Inc. is a domestic corporation whose members, individually or collectively, are engaged in the buying and selling of copra in Misamis Oriental. The petitioner alleges that prior to the issuance of Revenue Memorandum Circular 47-91 on June 11, 1991, which implemented VAT Ruling 190-90, copra was classified as agricultural food product under §103(b) of the National Internal Revenue Code and, therefore, exempt from VAT at all stages of production or distribution.

Respondents represent departments of the executive branch of government charged with the generation of funds and the assessment, levy and collection of taxes and other imposts.

The pertinent provision of the NIRC states:

Sec. 103. *Exempt Transactions.* — The following shall be exempt from the value-added tax:

(a) Sale of nonfood agricultural, marine and forest products in their original state by the primary producer or the owner of the land where the same are produced;

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(d) *Determination of the tax.* — (1) *Tax billed as separate item in the invoice*. If the tax is billed as a separate item in the invoice, the tax shall be based on the gross selling price, excluding the tax. "Gross selling price" means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in the consideration of the sale, barter or exchange of the goods, excluding the value-added tax. The excise tax, if any, on such goods shall form part of the gross selling price.

(2) *Tax not billed separately or is billed erroneously in the invoice.* — In case the tax is not billed separately or is billed erroneously in the invoice, the tax shall be determined by multiplying the gross selling price, including the amount intended by the seller to cover the tax or the tax billed erroneously, by the factor 1/11 or such factor as may be prescribed by regulations in case of persons partially exempt under special laws.

(3) *Sales returns, allowances and sales discounts.* — The value of goods sold and subsequently returned or for which allowances were granted by a VAT-registered person may be deducted from the gross sales or receipts for the quarter in which a refund is made or a credit memorandum or refund is issued. Sales discounts granted and indicated in the invoice at the time of sale may be excluded from the gross sales within the same quarter.

(§100(d))

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(b) Sale or importation in their original state of agricultural and marine food products, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption, and breeding stock and genetic material therefor;

Under § 103(a), as above quoted, the sale of agricultural non-food products in their original state is exempt from VAT only if the sale is made by the primary producer or owner of the land from which the same are produced. The sale made by any other person or entity, like a trader or dealer, is not exempt from the tax. On the other hand, under §103(b) the sale of agricultural food products in their original state is exempt from VAT at all stages of production or distribution regardless of who the seller is.

The question is whether copra is an agricultural food or non-food product for purposes of this provision of the NIRC. On June 11, 1991, respondent Commissioner of Internal Revenue issued the circular in question, classifying copra as an agricultural non-food product and declaring it "exempt from VAT only if the sale is made by the primary producer pursuant to Section 103(a) of the Tax Code, as amended."[2]

The reclassification had the effect of denying to the petitioner the exemption it previously enjoyed when copra was classified as an agricultural food product under § 103(b) of the NIRC. Petitioner challenges RMC No. 47-91 on various grounds, which will be presently discussed although not in the order raised in the petition for prohibition.

First. Petitioner contends that the Bureau of Food and Drug of the Department of Health and not the BIR is the competent government agency to determine the proper classification of food products. Petitioner cites the opinion of Dr. Quintin Kintanar of the Bureau of Food and Drug to the effect that copra should be considered "food" because it is produced from coconut which is food and 80% of coconut products are edible.

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[2] This circular is based on VAT Ruling No. 190-90 dated August 17, 1990 which revoked VAT Ruling No. 009-88 and VAT Ruling No. 279-88, June 30, 1988, classifying copra as an agricultural food product.

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On the other hand, the respondents argue that the opinion of the BIR, as the government agency charged with the implementation and interpretation of the tax laws, is entitled to great respect.

We agree with respondents. In interpreting § 103(a) and (b) of the NIRC, the Commissioner of Internal Revenue gave it a strict construction consistent with the rule that tax exemptions must be strictly construed against the taxpayer and liberally in favor of the state. Indeed, even Dr. Kintanar said that his classification of copra as food was based on "the broader definition of food which includes agricultural commodities and other components used in the manufacture/processing of food." The full text of his letter reads:

10 April 1991

Mr. VICTOR A. DEOFERIO, JR.
Chairman VAT Review Committee
Bureau of Internal Revenue
Diliman, Quezon City

Dear Mr. Deoferio:

This is to clarify a previous communication made by this Office about copra in a letter dated 05 December 1990 stating that copra is not classified as food. The statement was made in the context of BFAD's regulatory responsibilities which focus mainly on foods that are processed and packaged, and thereby copra is not covered.

However, in the broader definition of food which include agricultural commodities and other components used in the manufacture/processing of food, it is our opinion that copra should be classified as an agricultural food product since copra is produced from coconut meat which is food and based on available information, more than 80% of products derived from copra are edible products.

Very truly yours,

QUINTIN L. KINTANAR, M.D., Ph.D.
Director
Assistant Secretary of Health
for Standards and Regulations

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Moreover, as the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight. Indeed, the ruling was made by the Commissioner of Internal Revenue in the exercise of his power under § 245 of the NIRC to "make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, *including rulings on the classification of articles for sales tax and similar purposes*."

*Second*. Petitioner complains that it was denied due process because it was not heard before the ruling was made. There is a distinction in administrative law between legislative rules and interpretative rules.[3] There would be force in petitioner's argument if the circular in question were in the nature of a legislative rule. But it is not. It is a mere interpretative rule.

The reason for this distinction is that a legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof. In the same way that laws must have the benefit of public hearing, it is generally required that before a legislative rule is adopted there must be hearing. In this connection, the Administrative Code of 1987 provides:

> *Public Participation*. — If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.
>
> (2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.
>
> (3) In case of opposition, the rules on contested cases shall be observed.[4]

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[3] See *Victorias Milling Co. v. Social Security Commission*, 114 Phil. 555 (1962); *Philippine Blooming Mills v. Social Security System*, 124 Phil. 499 (1966).

[4] Bk. VII, Ch. 2, § 9.

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In addition such rule must be published.[5] On the other hand, interpretative rules are designed to provide guidelines to the law which the administrative agency is in charge of enforcing.

Accordingly, in considering a legislative rule a court is free to make three inquiries: (*i)* whether the rule is within the delegated authority of the administrative agency; (*ii*) whether it is reasonable; and (*iii*) whether it was issued pursuant to proper procedure. But the court is not free to substitute its judgment as to the desirability or wisdom of the rule for the legislative body, by its delegation of administrative judgment, has committed those questions to administrative judgments and not to judicial judgments. In the case of an interpretative rule, the inquiry is not into the validity but into the correctness or propriety of the rule. As a matter of power a court, when confronted with an interpretative rule, is free to (*i*) give the force of law to the rule; (*ii*) go to the opposite extreme and substitute its judgment; or (*iii*) give some intermediate degree of authoritative weight to the interpretative rule.[6]

In the case at bar, we find no reason for holding that respondent Commissioner erred in not considering copra as an "agricultural food product" within the meaning of § 103(b) of the NIRC. As the Solicitor General contends, "copra *per se* is not food, that is, it is not intended for human consumption. Simply stated, nobody eats copra for food." That previous Commissioners considered it so, is not reason for holding that the present interpretation is wrong. The Commissioner of Internal Revenue is not bound by the ruling of his predecessors.[7] To the contrary, the overruling of decisions is inherent in the interpretation of laws.

[5] *Tañada v. Tuvera*, 146 SCRA 446 (1986). See *Victorias Milling Co. v. SSC, supra* note 3.

[6] K. DAVIS, *ADMINISTRATIVE LAW* 116 (1965).

[7] Petitioner's claim that RMC No. 47-91 erroneously revoked irrelevant VAT rulings of the BIR is not correct. RMC No. 47-91 revoked VAT Rulings No. 009-88 and No. 279-88, which dealt with the question whether copra is an agricultural food or non-food product. VAT ruling No. 009-88 held that "copra as an agricultural product is exempt from VAT in all stages of distribution." On the other hand, VAT Ruling No. 279-88 treated "copra... as an agricultural food product in its original state" and, therefore, "exempt from VAT under Section 103(b) of the TAX Code, as amended by EO 273 regardless of whether the sale is made by producer or subsequent sale."

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Third. Petitioner likewise claims that RMC No. 47-91 is discriminatory and violative of the equal protection clause of the Constitution because while coconut farmers and copra producers are exempt, traders and dealers are not, although both sell copra in its original state. Petitioners add that oil millers do not enjoy tax credit out of the VAT payment of traders and dealers.

The argument has no merit. There is a material or substantial difference between coconut farmers and copra producers, on the one hand, and copra traders and dealers, on the other. The former *produce and sell* copra, the latter *merely sell* copra. The Constitution does not forbid the differential treatment of persons so long as there is a reasonable basis for classifying them differently.[8]

It is not true that oil millers are exempt from VAT. Pursuant to § 102 of the NIRC, they are subject to 10% VAT on the sale of services. Under § 104 of the Tax Code, they are allowed to credit the input tax on the sale of copra by traders and dealers, but there is no tax credit if the sale is made directly by the copra producer as the sale is VAT exempt. In the same manner, copra traders and dealers are allowed to credit the input tax on the sale of copra by other traders and dealers, but there is no tax credit if the sale is made by the producer.

*Fourth*. It is finally argued that RMC No. 47-91 is counterproductive because traders and dealers would be forced to buy copra from coconut farmers who are exempt from the VAT and that to the extent that prices are reduced the government would lose revenues as the 10% tax base is correspondingly diminished.

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[8] *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, 163 SCRA 371 (1988) (sustaining the validity of E.O. 273 adopting the VAT); *Sison, Jr. v. Ancheta*, 130 SCRA 653 (1984) (sustaining the validity of B.P. Blg. 135 providing for taxable income taxation).

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This is not so. The sale of agricultural non-food products is exempt from VAT only when made by the primary producer or owner of the land from which the same is produced, but in the case of agricultural food products their sale in their original state is exempt at all stages of production or distribution. At any rate, the argument that the classification of copra as agricultural non-food product is counterproductive is a question of wisdom or policy which should be addressed to respondent officials and to Congress.

**WHEREFORE, t**he petition is *DISMISSED*.

**SO ORDERED.**

*Narvasa, C.J. (Chairman), Regalado,* and *Puno, JJ*., concur.

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**THIRD DIVISION**

[A.M. No. RTJ-93-1008. November 14, 1994]

**TERESITA P. ARELLANO,** *petitioner, vs*. **JUDGE NAPOLEON R. FLOJO, FELINO BANGALAN-Clerk of Court III, HERMINIO DEL CASTILLO-RTC-OCC.; LUCINO JOVE- Deputy Sheriff,** *respondents*.

**SYLLABUS**

**1. REMEDIAL LAW; PROVISION REMEDIES; ATTACHMENT; BOND REQUIRED; EFFECT OF FAILURE TO POST; CASE AT BAR. —** Indeed, he issued the Writ of Attachment although the plaintiffs have not yet posted the required attachment bond. It is explicitly stated in his Comment that what was filed was merely an undertaking. The fact that the "Undertaking" was subscribed by the branch clerk of court does not necessarily follow that it carried the imprimatur of the presiding judge thereof. As a lawyer, respondent Bangalan, who is now a Judge, should have known the glaring distinctions